HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.9403 & 9410 of 2006; 22905 of 2007; 2056, 12546 & 19165 of 2010;

COMMON ORDER:

All these Writ Petitions relate to grant of quarry leases of black galaxy granite in R.L.Puram Village, Chimakurthy Mandal, Prakasam District.

2. Heard the learned counsel for petitioner in all the Writ Petitions, the learned Government Pleader for Mines and Geology and the learned counsel appearing for unofficial respondents.

W.P.No.9403 of 2006:

3. This Writ Petition was filed to quash the proceedings of the first respondent dated 03.12.2005 in Memo No.1957/M.II(1)/2005-5, confirming the proceedings No.14362/R3(2)/2004 of the second respondent dated 19.06.2004. In the impugned memo dated 03.12.2005, revision petition filed by the petitioner against the proceedings of the Director of Mines and Geology, dated 19.06.2004 was dismissed. However, this Writ Petition does not require any further consideration in view of the facts stated infra.

W.P.No.9410 of 2006:

4. This Writ Petition was filed challenging the proceedings of the first respondent dated 03.12.2005 in Memo No.1958/M.II(1)/2005-5, confirming the proceedings No.14361/R3(2)/2004 of the second respondent dated 19.06.2004. In the impugned memo dated 03.12.2005 revision petition filed by the petitioner against the proceedings of the Director of Mines and Geology, dated 19.06.2004, was dismissed. However, this Writ Petition also does not require any further consideration in view of the facts stated infra.

W.P.No.22905 of 2007:

5. This Writ Petition was filed challenging the action of the third respondent in not issuing No-objection Certificate in favour of the petitioner for grant of black galaxy granite in survey No.65/1A in an extent of Acs.8-08 cents in R.L.Puram Village, Chimakurthy Mandal, Prakasam District.

6. The petitioner applied for grant of lease for quarrying the black granite in respect of the above land to the first respondent through the second respondent by paying the requisite fee. Since the application of the petitioner was the first one, the second respondent processed its application and wrote a letter on 31.10.2000 to the third respondent for submission of his report. On the same day, the second respondent also addressed a letter to the petitioner fixing the date of inspection of the area as 23.11.2000. The third respondent should have submitted his report within thirty days after requisition from the second respondent. After receipt of the said report from the third respondent, the second respondent has to submit his report along with the recommendations within fifteen days to the first respondent. The survey, which was proposed on 23.11.2000 did not take place and the third respondent has not sent his report to the second respondent. The petitioner submitted several representations to respondent Nos.2 and 3 and in those circumstances, the present Writ Petition was filed.

W.P.No.2056 of 2010:

7. The petitioner in this Writ Petition submitted an application to the Assistant Director of Mines and Geology on 12.0.2.1997 and it was forwarded on 18.02.1997 to the Director of Mines and Geology for process, survey and inspection. The area was inspected on 26.03.1997 and it was noted that the applied area contains galaxy granite, but since the said area is in possession and occupation of some beneficiaries under grant by the State Government for residential purpose and they are residing therein by raising thatched huts, the Deputy Director of Mines and Geology recommended for rejection of the petitioner's application. But, since the State Government, vide G.O.Ms.No.181, dated 28.05.1998, delegated the powers of processing the application for grant of quarry lease to the Assistant Director of Mines and Geology, the application of the petitioner was forwarded to him. The Assistant Director of Mines and Geology, in view of the said human habitation, also proposed for rejection of the application of the petitioner. The

Mandal Revenue Officer, Chimakurthy, by proceedings dated 01.12.2004, stated that the said area was assigned to the beneficiaries and unless and until the pattas granted to the beneficiaries are cancelled and the land is resumed, no mining lease can be permitted. The Government, by G.O.Ms.No.74, Industries & Commerce (MI) Department, dated 16.02.2002, laid down a policy stating that the mineral bearing areas should not be allotted for any purpose other than mining. In the light of the said policy, after detailed discussions with respondents 1 to 4 herein, the petitioner agreed to offer an alternative land to rehabilitate the residential families that were in physical occupation of the land. The residents also consented for living in the alternative land and accordingly the petitioner proposed their rehabilitation in the land of the petitioner in survey No.113 of R.L.Puram Village. In view of the said orders, the quarry lease application dated 12.02.1997 of the petitioner, was processed for consideration. The petitioner gave their patta land of an extent of Acs.1-36 cents in survey No.113 of R.L.Puram Village for rehabilitation of the occupants of the proposed leased land. The said offer of the petitioner is accepted by the Government and the Tahsildar, Chimakurthy, by proceedings dated 25.10.2005, took over the land from the petitioner as a substitute to the beneficiaries residing in the land in survey No.61/1A and allotted the land of the petitioner to 47 beneficiaries. The petitioner also came forward to finance the construction of the residential houses for the beneficiaries. The beneficiaries took possession of the land offered by the petitioner. The Tahsildar, Chimakurthy, by proceedings dated 03.11.2005, confirmed the said fact and submitted a report to the Revenue Divisional Officer, Ongole on 10.07.2008. While so, the fifth respondent was originally granted a quarry lease, by proceedings dated 14.10.2004 for a period of 20 years. When Bhoomi Pooja was done for the construction of reservoir on 25.10.2004 by the then Hon'ble the Chief Minister, several existing leases in Deverapalem Village were cancelled on the ground of construction of the said reservoir. But, it is alleged that in order to create collusive proceedings, the Assistant Director of Mines and Geology issued a work order in favour of the fifth respondent on 02.11.2004.

8. It appears that the fifth respondent commenced mining operations only on 25.02.2005, as is evident from the report of the Tahsildar, Chimakurthy, addressed to the Collector, Prakasam District at Ongole on 25.02.2005. The fifth respondent, in fact, gave sub-contract to another person, who extracted the small quantity of 161.87 cubic meters. However, in view of the construction of the reservoir, the lease granted in favour of the fifth respondent was also cancelled by the State Government in public interest vide Memo No.126/M.II(1)/2005-13, dated 14.1.2005 along with other leases. The fifth respondent, without challenging the orders of cancellation, submitted a representation to the Government on 08.02.2006, and when the same was not considered, he filed W.P.No.4589 of 2006 along with others and all the writ petitions were disposed of on 19.03.2006 directing the authorities to consider the said representation. Ultimately, the representation of the fifth respondent was rejected by Memo No.6664/M.II(1)/2006, dated 22.06.2006 and the said order has become final. Even after rejection of the said representation, the fifth respondent submitted another representation dated 16.08.2008 directly to the Hon'ble the Chief Minister, which lead to the issuance of Memo No.11362/M.II(1)/2008-3, dated 15.05.2009. Challenging the same, the present Writ Petition was filed.

W.P.No.12546 of 2010:

9. The petitioner in this Writ Petition was granted quarry lease for an extent of 5-00 hectares in survey No.407 of Devarapalem Village, Chimakurthy Mandal, Prakasam District for a period of 15 years by proceedings of the Director of Mines and Geology dated 28.02.1998. A lease deed was executed on 28.04.1998 by the Assistant Director of Mines and Geology. The petitioner incurred huge investment of more than Rs.5 crores and commenced the quarry operations in the month of April, 1998. While so, the petitioner was issued a show cause notice by the Government of Andhra Pradesh in proceedings No.12682/M.II(1)/2005-3, dated 02.07.2005, proposing to cancel the lease in the larger public interest for construction of Sri Ramathirtham Balancing Reservoir, as the said leased land is lying near the submergence area of the said reservoir. The said notice was issued under Section 4(A)(3) of the Mines and Minerals (Development & Regulation) Act, 1957. The petitioner challenged the said show cause notice in W.P.No.15732 of 2005 and the same was disposed of on 17.07.2005 granting time to the petitioner to submit its explanation. The petitioner submitted explanation on 18.07.2005. But, without considering the same, the quarry lease of the petitioner was cancelled in Memo No.12682/M.II(1)/2005-13, dated 14.11.2005. Though the petitioner suffered huge loss, it did

not challenge the orders of cancellation. However, the petitioner made a representation before the Joint Collector and Administrator for Relief and Rehabilitation, Prakasam District on 08.02.2006, requesting for allotment of a similar mineral bearing land for quarry lease as compensatory rehabilitative measure, in view of the premature cancellation of quarry lease. The said request was made in tune with the assurance given by the Hon'ble the Chief Minister on the floor of Assembly on 13.12.2005. When the said request was not considered, the petitioner filed W.P.No.4588 of 2006 to consider the representation dated 08.02.2006. In the meanwhile, K.Venkata Ramana, the fourth respondent herein, who was also granted a quarry lease and whose lease was cancelled in view of public interest, also filed W.P.No.4589 of 2006. Two others also filed W.P.Nos.4590 and 4596 of 2006. All those Writ Petitions were disposed of by this Court on 09.03.2006, directing the respondents therein to consider the representations filed by the petitioners therein and pass appropriate orders on merits and in accordance with law. In pursuance thereof, the Government passed an order on 22.06.2006 in Memo No.6664/M.II(1)/2006, rejecting the representations. Challenging the same, the petitioner filed a review before the Government and no orders were passed thereon and it is pending. The petitioner also submitted an application on 19.12.2009 for grant of mining lease in an extent of Acs.8-08 cents in survey No.65 of R.L.Puram Village, Chimakurthy Mandal, Prakasam District, which was not allotted to any other person for mining purpose. The petitioner came to know that the fourth respondent submitted a representation dated 16.08.2008 to the Hon'ble the Chief Minister of Andhra Pradesh on 01.09.2008 and obtained orders in Memo No.11362/M.II(1)/2008-3, dated 15.05.2009, granting lease in his favour. Challenging the same, the present Writ Petition was filed.

W.P.No.19165 of 2010:

10. This Writ Petition was filed by the petitioner in W.P.Nos.9403 and 9410 of 2006 challenging the proceedings of the first respondent in Memo No.11362/M.II(1)/2008-3, dated 15.05.2009 and proceedings No.20323/R3(2)/2004, dated 14.10.2004. Similarly, W.P.Nos.2056 of 2010 and 12546 of 2010 were also filed challenging the proceedings of the first respondent in Memo No.11362/M.II(1)/2008-3, dated 15.05.2009.

11. The petitioner was granted quarry lease in an extent of Acs.12.44 cents in survey Nos.382/P and 406 of Devarapalem Village, Chimakurthy Mandal, Prakasam District for a period of 15 years, by proceedings dated 27.03.1998, and also granted another quarry lease over an extent of Acs.3.00 cents in survey No.58 of Boodawada Village, Chimakurthy Mandal, Prakasam District, by proceedings dated 24.01.1997. Lease deeds were executed on 25.09.1998. When the petitioner had commenced quarrying operations, the staff of Irrigation Department i.e., NSP Canal Camp obstructed the continuance of quarrying operations stating that they were already preparing the area for construction of reservoir and directed the petitioner not to proceed with the quarrying operations. The same was brought to the notice of the Assistant Director of Mines and Geology. The Executive Engineer, O & M Division, Chimakurthy, through his letter No.DB/D2/W.81/900M, dated 25.10.2004, requested the Assistant Director of Mines and Geology to cancel all the lease agreements which are in force and not to sanction any fresh leases in the submerged area and in the bund portion of the reservoir to anybody. The Director of Mines and Geology issued proceedings on 19.06.2004 determining the leases granted in favour of the petitioner. Aggrieved by the same, the petitioner filed revision petition before the Government of Andhra Pradesh and the said revision was dismissed. Challenging the same, the petitioners filed W.P.Nos.9403 and 9410 of 2006 on the ground that the said orders were passed without issuing any notice and when the petitioner approached the Assistant Director of Mines and Geology, the petitioner was informed that a show cause notice was served on them and the orders were passed thereafter only. When the petitioner enquired with the postal authorities about the non-service of show cause notice and asked for conducting an enquiry, an enquiry was conducted and the petitioner was intimated as follows:

> " Enquiry reveals that the RL No.5378 dated Nil of Hyderabad was received at Lawyerspet S.O on 22-5-2004 and delivered to Sri N.V.Murali Krishna Prasad on 22-5-2004 at Lawyerspet post office instead of Smt.V.Padmavathi (Petitioner) without authorization. He has affixed his signature along with the stamp on behalf of M/s.Tharun Rock Corporation, Ongole. Suitable action will be taken against the postman at fault. The inconvenience caused to you is deeply regretted."

12. The petitioner further states that even before the determination of quarry leases of the petitioner, the Assistant Director of Mines and Geology received an application from K.Venkata Ramana, the fifth respondent herein on 22.06.2004 for granting quarry lease in his favour. He took demand drafts on 31.05.2004 itself and submitted his

application without filling it properly. Even before the determination of the quarry leases of the petitioner, the Assistant Director of Mines and Geology processed the application of the fifth respondent and sent the same to the Mandal Revenue Officer, Chimakurthy for grant of No-objection Certificate in favour of the fifth respondent. Challenging such malafide action and grant of quarry lease in favour of the fifth respondent by Memo No.11362/M.II(1)/2008-3, dated 15.05.2009, the petitioner filed the present Writ Petition.

13. It is submitted by the learned counsel for petitioner in W.P.Nos.9403, 9410 of 2006 and 19165 of 2010 that the person in whose favour Memo No.11362/M.II(1)/2008-3 dated 15.05.2009 was issued, was not an applicant to the quarry lease in R.L.Puram Village. He was one of the lessees, whose quarry leases in Devarapalem Village were determined due to construction of Sri Ramathirtham Balancing Reservoir and when he along with others submitted a representation on 08.02.2006 to the Government and when the same was not considered, he along with others filed W.P.Nos.4589, 4590 and 4596 of 2006 and this Court disposed of the said batch of cases on 09.03.2006 for consideration by the respondents therein in accordance with law. The Government issued Memo No.6664/M.II(1)/2006, dated 22.06.2006, rejecting the representations. K.Venkata Ramana is one of the persons, whose representation was rejected. He did not challenge the order of rejection, but submitted another representation dated 16.02.2008 directly to the Hon'ble the Chief Minister and got the present impugned order in his favour, overlooking the seniority. The order passed by the Government is discriminatory, bereft of reasons and is liable to be set aside.

14. The learned Senior counsel, Sri B. Adinarayana Rao appearing for K.Venkata Ramana submitted that the petitioner in W.P.No.2056 of 2010 suppressed material facts and the Writ Petition is liable to be dismissed on that ground alone. He relied on decisions of the Hon'ble Supreme Court in **Raj Kumar Soni V. State of U.P**[1] and **Manohar Lal V. Ugrasen**[2]**.** He further submitted the Government expressed its concurrence for consideration of the case of his client in preference to other applications and in the absence of issuance of any further order of sanction, the Writ Petition is premature. The application of the petitioner in W.P.No.2056 of 2010 was not in proper form and it itself is not liable to be considered. There is a distinction in law with regard to malice in fact and malice in law, and in the instant case, the impugned order is not liable to be interfered with.

15. Rule 12(5)(b) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short, the Rules) reads as follows:

> **"Rule 12(5)(b)**: The application for grant of P.L. or Q.L. for granite and marble shall be disposed off by the Director in the order of their receipt. Whenever, more than one application is received on the same day, the Director shall grant licence or lease to the deserving applicant on merits to be recorded in writing:
>
> Provided that the Director may grant a P.L. or Q.L. to an applicant whose application is received later, in preference to earlier appl
>
> Provided further that where a prospecting licence has been granted in respect of any land the Licensee shall have preferential righ

16. Under the impugned proceedings, dated 15.05.2009, the Government accorded permission overlooking the priority in order to grant quarry lease for black galaxy granite in favour of K.Venkata Ramana over an extent of 2.85 hectares in survey No.65/1A of R.L.Puram Village, Chimakurthy Mandal, Prakasam District, while rejecting the other quarry lease/prospecting license applications received over the area, subject to the following conditions.

> " A) Issue of NOC by the Revenue Department on the classification and availability of the subject area.
>
> B) Vacation of stay orders issued by the Hon'ble High Court of Andhra Pradesh in W.P.No.25628/2008 filed by Sri Vaka Srinivasa Reddy, and subject to other W.Ps if any pending."

17. So far as W.P.No.25628 of 2008 referred in the impugned memo is concerned, it was filed by two petitioners challenging the action of respondents 1 to 6 in leasing out the land admeasuring Acs.7.50 cents out of Acs.8.08 cents acquired by the Government in Survey No.65/1 of R.L. Puram Village, Chimakurthi Mandal, Prakasam District to the seventh respondent therein, the petitioner in W.P.No.2056 of 2010, and in not passing orders on the representation of the petitioners dated 12.08.2004, as arbitrary. The said Writ Petition was dismissed on 12.10.2009.

18. In respect of the land in Survey No.65/1A of R.L.Puram Village, the following applications were state to have been pending.

> "1. M/s.Venkateswara Granites

2. M/s.Sri Balaji Granites (PL)
3. M/s.Padmavathi Granites
4. M/s.Golden Rocks & Minerals (P) Ltd.
5. Smt.C.M.Venkata Lakshmamma
6. M/s.Corner Stones
7. Sri D.Karunakara Reddy
8. Sri Vaka Srinivasa Reddy
9. Sri K.Venkata Ramana"

19. The first applicant is the petitioner in W.P.No.2056 of 2010. Their application was processed further on handing over their patta land for the rehabilitation of the persons who were granted pattas in the above land and their pattas were subsequently cancelled, in view of such rehabilitation. When their application was not considered, they filed W.P.No.17726 of 2004 seeking a direction to the Mandal Revenue Officer, Chimakurthy for giving no objection certificate for grant of quarry lease and the same was disposed of on 01.11.2004 with a direction to the Mandal Revenue Officer to dispose of their request for clearance as per Rules. Pursuant to the said order, the Mandal Revenue Officer informed the applicant on 01.12.2004 that the land which consists of an extent of Acs.8-08 cents, out of which the applicant requested for issuance of No-objection Certificate for an extent of Acs.7-50 cents, does not belong to the Government by the date of application as on 01.12.2004. It belongs to some residents who were residing in the land, as they were granted house site pattas in the year 1982. Unless and until the pattas granted to the beneficiaries are cancelled and the land is resumed, the title continues to be with the beneficiaries. He accordingly stated that No-objection Certificate cannot be issued. When the dwellers expressed their willingness to leave for alternative site, the Mandal Revenue Officer, Chimakurthi proceeded to issue NOC in favour of the petitioner. At that stage, the Director of Mines and Geology vide Memo No.5111/R.3-2/97, dated 09.11.2005, returned all the six applications for further processing.

20. Thereafter only K.Venkata Ramana submitted a representation to the Hon'ble the Chief Minister on 16.08.2008 stating that he made an application for grant of quarry lease in survey No.65/1A of R.L.Puram Village over an extent of Acs.8-11 cents on 13.08.2008 and it is a Government land which was previously assigned for house sites to weaker sections. His earlier lease was terminated within 13 months from the date of execution of quarry lease to accommodate construction of Sri Ramathirtham Balancing Reservoir and in view of the order in W.P.No.4589 of 2006, dated 19.03.2006, his representation is liable to be considered. At this stage, it is relevant to state that pursuant to the said order of this Court, the representations of all leaseholders, including that of K.Venkata Ramana, whose leases were cancelled for the purpose of reservoir, were considered and rejected. The file was processed at the Government level on the said representation to the Hon'ble the Chief Minister seeking for necessary permission from the Government under Rule 12(5)(b) of the Rules duly overlooking the priority in order to grant quarry lease in favour of the applicant, while rejecting the other quarry lease/prospecting licence applications subject to the issuance of No-objection Certificate by the Revenue Department and grant of orders of stay in W.P.No.25628 of 2008. The same was approved by the Government and the impugned memo was issued. No special reasons were noticed in the note file containing the decision for according the permission by overlooking the priority under Rule 12(5)(b) of the Rules.

21. Though the learned counsel appearing for K.Venkata Ramana attacked the case of the petitioner in W.P.No.2056 of 2010 on facts, the said attack need not be considered in view of challenge made to the impugned memo by other petitioners also. The point that arises for consideration is whether the power under Rule 12(5)(b) of the Rules was properly exercised by the Government or not. The relevant rule was already extracted above.

22. A perusal of the note file submitted to this Court indicates that it is not in dispute that K.Venkata Ramana is one of the lessees whose leases were cancelled for the purpose of construction of Sri Ramathirtham Balancing Reservoir. He is not the only lessee, but there are other lessees whose leases were cancelled. They submitted a representation to the Government for providing alternative leases in some other area. When their representations were not considered, this Court by order in W.P.No.4588 of 2006 and batch dated 09.03.2006, directed the Government to consider the representations and dispose of them in accordance with law. Accordingly, the Government vide Memo No.6664/M.II(1)/2006, dated 22.06.2006, rejected the said representations. K.Venkata Ramana is one of the persons

whose representations were rejected and the said rejection was not challenged in any Court of law and that has become final. He submitted a representation to the Hon'ble the Chief Minister directly on 16.08.2008 for consideration of his case. By that time, the application of the petitioner in W.P.No.12546 of 2010 for review of the decision is pending with the Government. No orders were passed on such review. Nearly 9 applications were pending consideration at the time of such representation of the fifth respondent. The petitioner in W.P.No.2056 of 2010 is the first applicant and was pursuing the case by offering alternative land to the persons who granted pattas in the land applied. It appears that the Government resumed the land on 03.11.2005 and it was available for grant to the lessees. Though the pattas were cancelled and orders were issued by the Tahsildar, Chimakurthy, on 25.10.2005, issuing pattas to 47 beneficiaries of land in survey No.65/1A, they have not actually vacated the said land and occupied the land in survey No.113. The Assistant Director of Mines and Geology, who inspected the area, reported that the land offered by the first applicant in survey No.113 is not suitable for dwelling purpose, as the land is situated within the proximity of quarry dumps and active quarries. He also stated that the Revenue Department has not given No-objection Certificate so far. The application of K.Venkata Ramana is the last application over 8 applications. Curiously, though his application was rejected earlier pursuant to the orders in W.P.Nos.4588 of 2006 and batch dated 09.03.2006, the representation of K.Venkata Ramana to the Hon'ble the Chief Minister dated 16.08.2008 was sought to be considered pursuant to the said orders dated 09.03.2006 and his case was recommended to the Government for according permission. The Government, accordingly, accorded permission mechanically without examining the relevant considerations for giving priority.

23. From the file produced before the Court by the Director of Mines and Geology, it appears that on the representation of the petitioner in W.P.No.2056 of 2010, dated 15.10.2009, the Government by Memo No.15180/M.II(1)/2009-3 dated 04.08.2010, sought information from the Director of Mines and Geology, Hyderabad on five points and by a further memo, dated 02.11.2010, sought information on three more points. On the said memos, a report was called for from the Assistant Director of Mines and Geology, who submitted a report on 12.11.2010 to the Director of Mines and Geology. The Director of Mines and Geology sought information from the Assistant Director of Mines and Geology to enquire with 46 beneficiaries residing in the area and also with the Tahsildar and submit a detailed report on the possibility of issue of No-objection Certificate to the said area by the Revenue Department, by proceedings dated 14.12.2010. The file was lying at that stage.

24. The proviso to Rule 12(5)(b) of the Rules enables the Director to grant a prospective licence or quarry lease to an applicant whose application is received later, in preference to earlier applications for any special reasons to be recorded in writing with the prior approval of the Government. In view of the said proviso, it is for the Director to indicate special reasons for giving preference to a later applicant and get approval from the Government. In the note submitted to the Government for getting approval, the history of the case was narrated and the views of the Assistant Director of Mines and Geology were extracted. The Assistant Director of Mines and Geology recommended for consideration of the request of K.Venkata Ramana, the ninth applicant, to give priority to his application by taking a sympathetic view as the Government was vested with the powers under Rules 12(5)(b) of the Rules. In the report of the Assistant Director of Mines and Geology, it was observed that the first applicant, the petitioner in W.P.No.2056 of 2010, had got priority but he did not hold any quarry lease which indicated that he may not be having any experience in mining field. The second applicant was also not having any quarry lease and hence he may not be having any expertise in mining field. So far as the applicants 3 to 6 and 8 are concerned, it was stated that they have no priority over the first applicant, the petitioner in W.P.No.2056 of 2010, and they did not come forward to compensate the market value of the alternative land. The seventh applicant withdrew his application. It was also stated that the ninth applicant is the last application and gets no priority in the order of receipt. However, his request for consideration was examined. The opinion of the Zonal Joint Director of Mines and Geology, Ongole was that the first applicant's request should be kept in view while taking decision on grant of lease. Ultimately, the Director of Mines and Geology submitted a file stating as follows:

> "Keeping in view of the above facts and the orders issued by the Hon'ble High Court in W.P.No.4589/2006 dated 09.03.2006 filed by Sri K.Venkata Ramana after premature termination of quarry lease by the Government seeking allotment

of alternative area for quarry lease in lieu of the quarry lease cancelled for accommodation of Ramatheertham Balancing Reservoir directing for disposal of the representation and passing of appropriate orders on merits and in accordance with law, the Government is requested to accord necessary permission under rule 12(5)(b) of APMMC Rules 1966 duly overlooking the priority in order to grant quarry lease in favour of the applicant at Sl.No.9 viz., Sri K.Venkata Ramana while rejecting the other Quarry Lease/Prospecting License applications received over the area, subject to the following conditions.

1. Issue of N.O.C. by the Revenue Department on the classification and availability of the subject area.
2. Vacation of stay orders issued by the Honourable High Court of Andhra Pradesh in W.P.No.25628/2008 filed by Sri Vaka Srinivasa Reddy, subject to other W.Ps., if any pending."

25. So far as the reason that orders have to be issued in view of W.P.No.4589 of 2006 dated 09.03.2006 is concerned, the said request was already negatived by the Government in Memo No.6664/M.II(1)/2006 dated 22.06.2006. The other reason that the quarry lease was cancelled for accommodation of Sri Ramathirtham Balancing Reservoir is concerned, there are other lessees whose leases were also cancelled like him. Thus, the two reasons do not exist for granting priority and no other reason was assigned for giving priority to the fifth respondent. This amounts to arbitrary decision which cannot be sustained.

26. Though the learned counsel for both sides cited **V.Murali V. Government of Andhra Pradesh**[3], **H.C.Suman V. Rahabilitation Ministry Employees' Coop. House Building Society Ltd**[4], **Haryana State Industrial Development Corpn. Ltd. V. Mawasi, Sterling Computers Ltd. V. M & N Publications Ltd**[5], **Barium Chemical Ltd. V. Govt. of India**[6] and **Ch.V.Girish V. Government of Andhra Pradesh**[7], they are not useful for deciding the issue involved in the present cases. However, the decision in **Ch.V.Girish**'s case (7 supra) is of some use as it considered the same Rule, Rule 12(5)(b). In the said decision, it was stated that the reasons indicated to overlook the priority of applications should be valid and sound and they should be in furtherance of the object and the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder. Any reason which runs contrary to the same cannot be considered as a special reason within the meaning of the proviso to Rule 12(5)(b) of the Rules to enable the Government to approve the proposals of the Director of Mines and Geology for overlooking priority of applications.

27. In the instant case, the representation of the fifth respondent was considered as if the Government was considering pursuant to the order of this Court dated 09.03.2006 in W.P.No.4589 of 2006 when it already rejected as stated above. The other ground mentioned was that the fifth respondent was a lessee whose lease was terminated for construction of Sri Ramathirtham Balancing Reservoir. In fact, there were several other lessees like petitioners in W.P.Nos.12546 and 19165 of 2010 and in fact a review petition filed by the petitioner in W.P.No.19165 of 2010 was pending. Hence, reasons indicated by the Director of Mines and Geology for giving priority to the fifth respondent are not relevant reasons.

28. In view of the above, W.P.Nos.9403 and 9410 of 2006 are dismissed as infructuous. In view of the direction infra, the application of the petitioner in W.P.No.22905 of 2007 has also to be considered in accordance with law. Accordingly, W.P.No.22905 of 2007 is disposed of. W.P.Nos.2056, 12546 and 19165 of 2010 are allowed and the impugned memo dated 03.12.2005 in memo No.1957/M.II(1)/2005-5 of the Director of Mines and Geology is set aside and the Director of Mines and Geology is directed to consider the pending applications in accordance with law and pass appropriate orders if the applied area is available for lease. No costs. Miscellaneous Petitions pending, if any in these Writ Petitions, shall stand closed.

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A.RAMALINGESWARA RAO, J

Date: 12.12.2014
TJMR

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[1] (2007) 10 SCC 635
[2] (2010) 11 SCC 557
[3] 2000(1) ALD 658
[4] (1991) 4 SCC 485

[5] (1993) 1 SCC 445
[6] AIR 1987 AP 267
[7] 2011 (1) ALD 1